



August 16, 2002

TO: ALL SCHOOL DISTRICTS, COUNTY SUPERINTENDENTS OF SCHOOLS AND OTHER INTERESTED PARTIES

TITLE 2. STATE ALLOCATION BOARD

NOTICE OF PROPOSED REGULATORY ACTION

THE STATE ALLOCATION BOARD PROPOSES TO AMEND, ADOPT, AND REPEAL REGULATION SECTIONS, TITLE 2, CALIFORNIA CODE OF REGULATIONS, RELATING TO THE DEFERRED MAINTENANCE PROGRAM

PROPOSED AMENDMENTS TO REGULATION SECTIONS: 1866, 1866.1, 1866.2, 1866.3, 1866.4, 1866.5, 1866.5.3, 1866.7, 1866.8, 1866.9, AND 1866.10

REGULATION SECTIONS PROPOSED FOR ADOPTION: 1866.4.1, 1866.4.2, 1866.4.3, 1866.4.4, 1866.4.6, 1866.4.7, 1866.5.1, 1866.5.2, 1866.5.4, 1866.5.5, 1866.5.6, 1866.5.7, 1866.5.8, 1866.5.9, 1866.9.1, 1866.12, 1866.13, AND 1866.14

REGULATION SECTIONS PROPOSED FOR REPEAL: 1866.4.5 AND 1866.6

NOTICE IS HEREBY GIVEN that the State Allocation Board (SAB) proposes to amend, adopt, and repeal the above-referenced regulation sections, as well as adopt the above-referenced forms contained in Title 2, California Code of Regulations (CCR). A public hearing will be held if any interested person, or his or her duly authorized representative, submits a written request for a public hearing to the Office of Public School Construction (OPSC) no later than 15 days prior to the close of the written comment period. Following the public hearing if one is requested, or following the written comment period if no public hearing is requested, the OPSC, at its own motion or at the instance of any interested person, may adopt the proposals substantially as set forth above without further notice.

AUTHORITY AND REFERENCE CITATIONS

The SAB is proposing to amend, adopt, and repeal these regulations under the authority provided by Section 15503 of the Government Code and Section 17588 of the Education Code. The proposal interprets and makes specific reference to Sections 2553, 17070.75, 17280, and 17582 through 17592.5 of the Education Code.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The enactment of new laws and operation needs of the program have created dramatic changes in the Deferred Maintenance Program (DMP). As a result, the current regulations that govern the DMP are in some cases obsolete and inconsistent pursuant to newly enacted laws.

Existing Regulation Section 1866 represents a set of defined words and terms used exclusively for these regulations. The proposed amendments provide additional specific words and terms essential to these regulations.

Existing Regulation 1866.1 outlines the prerequisites to receiving an apportionment under the DMP. The proposed amendments further define the criteria to receive an apportionment under the DMP, as well as define the entities that may apply for DMP funding.

Existing Regulation Section 1866.2 provides direction to school districts seeking an apportionment under the DMP. The proposed amendment establishes the application process for receiving a DMP Basic Grant.

Existing Regulation Section 1866.3 specifies the process for filing and reviewing DMP applications. The proposed amendment establishes the application process for receiving a DMP Extreme Hardship Grant.

Existing Regulation Section 1866.4 establishes the necessity for a district to file a five year plan of maintenance needs. The proposed amendments establish the purpose for which the *Five Year Plan*, Form SAB 40-20, is filed and explains application acceptance guidelines.

Proposed adoption of Regulation Section 1866.4.1 provides specific criteria pertaining to what type of projects may be included on a five year plan and explains the uses of the Basic Grant apportionment.

Proposed adoption of Regulation Section 1866.4.2 provides for the calculation of the Basic Grant apportionment and defines a prorated basic grant apportionment.

Proposed adoption of Regulation Section 1866.4.3 defines the type of revenue a district may utilize in order to deposit its matching share contribution.

Proposed adoption of Regulation Section 1866.4.4 provides a mechanism for utilizing funds deposited but unmatched by the State. It explains how a district can obtain the use of these deposited funds for the next fiscal year.

Existing Regulation Section 1866.4.5 specifies the funding limitations for County Superintendents of Schools. The proposed amendment deletes this section, as it was appropriate to relocate it elsewhere in these regulations.

Proposed adoption of Regulation Section 1866.4.6 specifies to County Superintendents of Schools the timeframe for the release of State funds and the process if timeframe is not met.

Proposed adoption of Regulation Section 1866.4.7 provides a process if a district does not deposit the maximum amount of matching funds.

Existing Regulation Section 1866.5 allows a district to apply for funding for multiple critical hardship projects. The proposed amendments provide eligibility criteria for districts to obtain extreme hardship grants.

Proposed adoption of Regulation Section 1866.5.1 explains what documents are required for submittal in order for the OPSC to accept Extreme Hardship Grant applications.

Proposed adoption of Regulation Section 1866.5.2 explains how the Extreme Hardship Grant is determined for the first critical hardship project and multiple critical hardship projects.

Existing Regulation Section 1866.5.3 assigns priorities to critical hardship projects when funding is insufficient to fully fund all critical hardship requests. The proposed amendments redefine what constitutes a priority one critical hardship project, and specifies the necessary language to be included in a district's governing board resolution when requesting priority one status. In addition, this section incorporates a process for projects placed and funded from the unfunded list.

Proposed adoption of Regulation Section 1866.5.4 sets forth the process for reimbursement of expenditures and requires OPSC approval of the project prior to incurring construction costs.

Proposed adoption of Regulation Section 1866.5.5 explains the uses of the Extreme Hardship Grant apportionment.

Proposed adoption of Regulation Section 1866.5.6 specifies the conditions in which school districts may receive an increase in funding for ongoing project costs.

Proposed adoption of Regulation Section 1866.5.7 provides direction to school districts regarding the release of funds.

Proposed adoption of Regulation Section 1866.5.8 establishes the criteria for ensuring project completion or progress on the project for districts that have received extreme hardship grant apportionments.

Proposed adoption of Regulation Section 1866.5.9 specifies that an exemption will be provided when determining a district's contribution if the removal of an underground toxic tank cannot be funded by any other source.

Existing Regulation Section 1866.6 provides a process for payment of the apportionment. The proposed amendment repeals this section as this process is no longer valid.

Existing Regulation Section 1866.7 specifies the role of a district's governing board once funds have been apportioned and deposited in the deferred maintenance fund of the district. The proposed amendments are non-substantive in nature and do not change the intent of the section.

Existing Regulation Section 1866.8 specifies that expenditures shall be subject to competitive bidding. The proposed amendments further clarify that the expenditures made by a district must be in compliance with the Public Contract Code, and provide specificity with regard to awarding emergency contracts.

Existing Regulation Section 1866.9 specifies that projects that have received apportionments shall be in compliance with all laws, ordinances, and regulations. The proposed amendment deletes the existing language. The new language provides direction to school districts that have received funding and specifies a timeline to submit an expenditure report after funds have been released.

Proposed adoption of Regulation Section 1866.9.1 provides for an expenditure audit process and specifies a timeframe when the audit will commence and be completed. In addition, districts are put on notice to maintain all supporting documentation pertaining to all costs associated with the extreme hardship grant apportionment expenditures. The proposed amendments to existing Regulation Section 1866.10 renumber the reference sections to the correct Education Code sections.

Proposed adoption of Regulation Section 1866.12 explains the conditions of how earned interest on DMP grant funds will be treated.

Proposed adoption of Regulation Section 1866.13 stipulates that work listed on the *Five Year Plan* that has been submitted and funded under the School Facility Program (SFP) or the Federal Renovation Program shall be removed from said plan and the district shall submit a revised *Five Year Plan*.

Proposed adoption of Regulation Section 1866.14 specifies that funding applications may not be amended to increase the scope of a project. This concept is current practice under the SFP and ensures equity to all project applications submitted or not yet filed and does not disadvantage projects on the DMP workload list.

DOCUMENTS INCORPORATED BY REFERENCE

1. *Five Year Plan*, Form SAB 40-20 (New 04/02)
2. *Certification of Deposits*, Form SAB 40-21 (New 04/02)
3. *Extreme Hardship Funding Application*, Form SAB 40-22 (New 04/02)
4. *Fund Release Authorization*, Form SAB 40-23 (New 04/02)
5. *Expenditure Report*, Form SAB 40-24 (New 04/02)

These forms are too cumbersome or impractical to publish in Title 2 of the CCR. Therefore, it is proposed to incorporate the forms by reference. Copies of these forms are available for review during normal business hours at the OPSC located at 1130 K Street, Suite 400, Sacramento, CA 95814. They are also available on the Internet at: <http://www.opsc.dgs.ca.gov>.

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The Executive Officer of the SAB has determined that the proposed regulations do not impose a mandate or a mandate requiring reimbursement by the state pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government

Code. It will not require local agencies or school districts to incur additional costs in order to comply with the proposed regulations.

ECONOMIC IMPACT

The Executive Officer of the SAB has assessed the potential for significant adverse economic impact on businesses or private persons that might result from the proposed regulatory action and the following determinations have been made relative to the required statutory categories:

The SAB has made an initial determination that there will be no significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

There will be no impact on the creation or elimination of jobs within the state, the creation of new businesses or the elimination of existing businesses or the expansion of businesses in California.

The SAB is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

There will be no non-discretionary costs or savings to local agencies.

There will be no costs to school districts except for the required district contribution toward each project as stipulated in statute.

There will be no costs or savings in federal funding to the State.

There are no costs or savings to any State agency.

The SAB has made an initial determination that there will be no impact on housing costs.

EFFECT ON SMALL BUSINESSES

It has been determined that the adoption of the regulation sections will not affect small businesses in the ways identified in subsections (a)(1)-(4) of Section 4, Title 1, CCR. These regulations only apply to school districts for purposes of funding school facility projects.

SUBMISSION OF COMMENTS, DOCUMENTS AND ADDITIONAL INFORMATION

Any interested person may present statements, arguments or contentions, in writing, submitted via U.S. mail, e-mail or fax, relevant to the proposed regulatory action. Written comments submitted via U.S. mail, e-mail or fax, must be received at the OPSC no later than September 30, 2002 at 5:00 p.m. The express terms of the proposed regulations as well as the Initial Statement of Reasons are available to the public.

Written comments, submitted via U.S. mail, e-mail or fax, regarding the proposed regulatory action, requests for a copy of the proposed regulatory action or the Initial Statement of Reasons, and questions concerning the substance of the proposed regulatory action should be addressed to:

Lisa Jones, Regulations Coordinator

Mailing Address: Office of Public School Construction
1130 K Street, Suite 400
Sacramento, CA 95814

E-mail Address: lisa.jones@dgs.ca.gov

Fax No.: (916) 445-5526

AGENCY CONTACT PERSONS

Questions regarding this Notice of Proposed Regulatory Action may be directed to Lisa Jones at (916) 322-1043. If Ms. Jones is unavailable, questions may be directed to the backup contact person, Dennis Boydston, at (916) 322-0327.

ADOPTION OF REGULATIONS

Please note that, following the public comment period the SAB may adopt the regulations substantially as proposed in this notice or with modifications, which are sufficiently related to the originally proposed text and notice of proposed regulatory activity. If modifications are made, the modified text with the changes clearly indicated will be made available to the public for at least 15 days prior to the date on which the SAB adopts the regulations.

The modified regulation(s) will be made available and provided to: all persons who testified at and who submitted written comments at the public hearing, all persons who submitted written comments during the public comment period, and all persons who requested notification from the agency of the availability of such changes. Requests for copies of any modified regulation should be addressed to the agency's regulation coordinator identified above. The SAB will accept written comments on the modified regulations during the 15-day period.

SUBSTANTIAL CHANGES WILL REQUIRE A NEW NOTICE

If, after receiving comments, the SAB intends to adopt the regulations with modifications not sufficiently related to the original text, the modified text will not be adopted without complying anew with the notice requirements of the Administrative Procedure Act.

RULEMAKING FILE

Pursuant to Government Code Section 11347.3, the SAB is maintaining a rulemaking file for the proposed regulatory action. The file currently contains:

1. A copy of the text of the regulations for which the adoption is proposed in strikeout/underline.
2. A copy of this notice.
3. A copy of the Initial Statement of Reasons for the proposed adoption.
4. The factual information upon which the SAB is relying in proposing the adoption.

As data and other factual information, studies, reports or written comments are received, they will be added to the rulemaking file. The file is available for public inspection at the OPSC during normal working hours. Items 1 through 3 are also available on the OPSC Internet Web site at: <http://www.opsc.dgs.ca.gov> under "Regulations," then click on "Proposed Regulations."

ALTERNATIVES

In accordance with Government Code Section 11346.5(a)(13), the SAB must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the SAB would be more effective in carrying out the purpose of which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the agency's regulation coordinator named in this notice or may be accessed on the Web site listed above.